

LAW OFFICES

SCHWARTZ, WOODS & MILLER

SUITE 300, THE DUPONT CIRCLE BUILDING
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1717

ROBERT A. WOODS
LAWRENCE M. MILLER
STEVEN C. SCHAFER
MALCOLM G. STEVENSON

TELEPHONE 202-833-1700
FACSIMILE 202-833-2351
WRITER'S INTERNET: miller@swmlaw.com
WRITER'S EXTENSION: 213

February 7, 2000

RECEIVED
FEDERAL ELECTION COMMISSION
FEB 15 5 28 PM '00
LOUIS SCHWARTZ
TAMARA WEINBERG
MARK B. WEINBERG
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4956

Ladies and Gentlemen:

On behalf of New Hampshire Public Television ("NHPTV"), we hereby respond to the above-referenced complaint by "LaRouche's Committee for a New Bretton Woods" in the above-referenced matter. Respondent's Statement of Designation of Counsel was filed in connection with a request for extension of time through February 4, 2000 in which to file this response; the extension was granted by letter of January 27, 2000. As discussed on February 4, 2000 with Commission staff, an additional day was needed to verify the information in this response with respect to IRS determination letters. It is respectfully requested that this response be considered as timely filed and considered in your disposition of the complaint.

The complaint was filed against NHPTV, the Union Leader newspaper, and New England Cable News, the joint sponsors of a debate held on the UNH campus on January 5, 2000 between two candidates for the Democratic presidential nomination. The complainant alleges that sponsorship of the debate by NHPTV constituted an expenditure by a corporation on behalf of a candidate for president that is prohibited by 2 U.S.C. 441b.

NHPTV operates the noncommercial educational television stations licensed by the Federal Communications Commission to the University of New Hampshire ("UNH"), providing statewide public television service. UNH is a public educational institution that is a part of the University System of New Hampshire. NHPTV is operated as an adjunct to the University of New Hampshire. It is governed by a Board of Governors which serves as a subcommittee of the Board of Trustees of the University System of New Hampshire.

NHPTV is thus a creature of the University System of New Hampshire and UNH. Pursuant to Title 15 (Education) New Hampshire Revised Statutes, Chapter 187-A, "State College and University System", Section 187-A:1, the University System of New

Hampshire is "established and made a body politic and corporate...". Similarly, pursuant to Section 187-A:3, UNH "is established and made a body politic and corporate...". As bodies "politic and corporate" the University System and UNH may well fall outside of the definition of "corporation" for the purposes of Section 441b, *cf.* Advisory Opinion 1982-26, affirming the holding in Advisory Opinion 1977-32 that a municipal corporation is a "corporation" for purposes of the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended ("the Act"). In any event, however, as shown below, NHPTV's activities in connection with the debate at issue would not offend the Act even if its parent institutions were considered to be corporations for purposes of the Act.

Under 11 C.F.R. §110.13(a)(1) a nonprofit educational and charitable organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3) and does not endorse, support, or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 C.F.R. §110.13(b) and §114.4(f). NHPTV's parent institutions have been determined by the Internal Revenue Service ("IRS") to be non-profit tax exempt educational organizations under §501(c) of the Internal Revenue Code. By letter issued in March 1939 the IRS determined that UNH is a tax-exempt educational organization under §501(c)(3); that letter was reissued in October 1976. By letter issued in February 1989 the IRS determined that the University System of New Hampshire is a tax-exempt educational organization under §501(c)(3). These are state governmental institutions which do not endorse, support, or oppose candidates for elective office or political parties. NHPTV's purpose in sponsoring the debate was to educate the public about campaign issues and the candidates' positions on those issues, and to stimulate increased voter interest and participation in the electoral process.

Traditionally the New Hampshire Presidential Primaries attract a large number of marginal candidates because a person can get on the ballot simply by filing a declaration of candidacy and paying a \$1,000 fee. In this election period there were 16 ballot candidates for the Democratic nomination and 14 ballot candidates for the Republican nomination. NHPTV, in consultation with the other two debate sponsors, determined that due to the time constraints of the debate and in order to produce a program which would attract carriage by the media and interest by viewers, the debate would be limited to candidates who met two criteria. To be invited, a candidate must have established a significant personal presence in New Hampshire during the primary campaign and must also have established a significant campaign organization presence in New Hampshire during the primary campaign. In the judgment of the sponsors, all of which are press organizations, two of the candidates for the Democratic nomination clearly met those criteria and were invited. The other 14 candidates clearly did not meet those criteria. The same sponsors also sponsored a debate a day earlier among selected candidates for the Republican nomination, of whom five met the criteria for inclusion. After applying their criteria, the sponsors consulted independent public opinion polls which confirmed that the criteria chosen had resulted in invitations to all candidates who had garnered significant voter support. NHPTV submits that these procedures meet the test of 11 C.F.R. §110.13(b). The sponsors used fair, impartial, and reasonable criteria to

provide a nonpartisan debate forum for significant candidates to communicate their views to the public. See 44 Fed. Reg. 76,734 (1979). The selection process did not involve any consideration of the background or views of the various candidates. Moreover, in producing these programs, NHPTV aimed to create and cover a news event in a traditional political debate format, in which two or more candidates seeking the same office appeared in a face-to-face confrontation. See 11 C.F.R. 110.13 and Advisory Opinion 1986-37. Therefore, assuming *arguendo* that NHPTV should be treated as a "corporation" for purposes of the Act, the sponsorship of the debate without inviting Mr. LaRouche did not constitute an illegal corporate contribution or expenditure.

Moreover, even if NHPTV did not fall within 11 C.F.R. §110.13(b), its sponsorship of the debate at issue would be an exempt activity under 11 U.S.C. 431(9)(B)(i) and 11 C.F.R. 100.7(b)(2) and 100.8(b)(2), because it produced the debate in order to distribute it as a news story through the facilities of the University of New Hampshire broadcasting stations which it operates. NHPTV routinely and consistently produces news and public affairs programming concentrating on the issues facing its New Hampshire audience, and it therefore should be considered as a press entity. See Advisory Opinions 1996-16 and 1996-41 and the opinions and cases cited therein.

In conclusion, there is no reason to believe that the activity complained of involved a violation of any statute within the Commission's jurisdiction.

Respectfully submitted,

SCHWARTZ, WOODS & MILLER

By: Lawrence M. Miller
Lawrence M. Miller

cc: John R. Velasquez, Jr., FEC
LMM/nmc